

ESTTA Tracking number: **ESTTA646163**

Filing date: **12/19/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057403
Party	Defendant The Original Wailers, LLC
Correspondence Address	AMY J BENJAMIN GOLDBERG COHEN LLP 1350 AVENUE OF THE AMERICAS, FOURTH FLOOR NEW YORK, NY 90404 UNITED STATES trademarks@goldbergcohen.com, mcohen@goldbergcohen.com, GlendaC@goldbergcohen.com
Submission	Motion to Dismiss 2.132
Filer's Name	AMY J BENJAMIN
Filer's e-mail	trademarks@goldbergcohen.com, mcohen@goldbergcohen.com, ssterling@goldbergcohen.com
Signature	/amy j benjamin/
Date	12/19/2014
Attachments	MOTION TO DISMISS.pdf(94051 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

BAMBOULA 8, LLC,

Petitioner,

vs.

CANCELLATION NO. 92057403

REG. NO. 4332360

THE ORIGINAL WAILERS, LLC,

Respondent.

DEFENDANT’S MOTION FOR JUDGMENT UNDER 37 CFR SECTION 2.132(b)

Defendant The Original Wailers, LLC (“TOW”) hereby moves for judgment under 37 CFR Section 2.132(b), due to the failure of Plaintiff Bamboula 8 (“Plaintiff”) to offer any evidence during its testimony period other than copies of USPTO records relating to its own registration and applications.

On October 29, 2014, Plaintiff filed its Notice of Reliance. Plaintiff’s Notice of Reliance contained three exhibits: a copy of one registration and a copy of two Office Actions. Specifically, Plaintiff’s evidence consists of just three exhibits: a copy of Reg. No. 4,031,818; an Office Action which issued in connection with Application No. 85/736,052 and an Office Action

which issued in connection with Application No. 85/736,051. Plaintiff is the owner of the Registration and Applications referenced in the Exhibits. Plaintiff submitted no deposition testimony or other evidence during its trial period. Plaintiff's trial period closed on October 29, 2014.

Pursuant to 37 CFR Section 2.132(b), Plaintiff's failure to submit any evidence other than USPTO records for its own registration and applications is grounds for dismissal of the Petition to Cancel for failure to take testimony:

If no evidence other than a copy or copies of Patent and Trademark Office records is offered by an party in the position of plaintiff, any party in the position of defendant may, without waiving the right to offer evidence in the event the motion is denied, move for dismissal on the ground that upon the law and the facts the party in the position of plaintiff has shown no right to relief.

37 C.F.R. §2.132(b).

Here, TOW is entitled to dismissal on the ground that Plaintiff failed to submit any evidence at trial other than its registration and applications. Plaintiff's failure to submit any evidence beyond the registration and applications requires the dismissal of the Petition to Cancel.

Under 37 CFR §2.132(c), the Board in its discretion may accept this motion despite the fact that it is being filed during TOW's testimony period, rather than before.

For the foregoing reasons, TOW respectfully requests that the Petition to Cancel be dismissed in its entirety pursuant to 37 CFR §2.132(b). TOW hereby reserves its right to take testimony in the event that this Motion is denied.

Date: December 19, 2014

GOLDBERG COHEN, LLP

By: /s/Amy J. Benjamin

Amy J. Benjamin

1350 Avenue of the Americas

4th Floor

New York, NY 10019

Tel: (212) 673-8350

Fax: (212) 658-9718

Email: trademarks@goldbergcohen.com

Attorneys for Registrant

The Original Wailers, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 19, 2014, the foregoing **DEFENDANT'S MOTION FOR JUDGMENT UNDER 37 CFR SECTION 2.132(b)** was served on counsel for Petitioner by first class mail, postage pre-paid and addressed as follows:

Marcella Ballard
Kristen Ruisi
Jessie Beeber
Mark B. Harrison
Rebecca Leibowitz
Venable LLP
P.O. Box 34385
Washington, DC 20043-4385
488 Madison Avenue
New York, NY 10022

Attorneys for Petitioner

/Amy J. Benjamin/
Amy J. Benjamin